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DIVISION OF POLICY ANALYSIS &
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Public Service Commission

May 25, 2000

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VIA AIRBORNE EXPRESS

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
445 Twelfth Street, SW - TW-A325
Washington, DC 20554

Re: Florida Public Service Commission's *Ex Parte* Response to the May 8 CALLS
ILECs' *Ex Parte* in Docket Nos. 98-137, 99-117, and 98-26

Dear Ms. Salas:

Enclosed please find five (5) copies of the Florida Public Service Commission *Ex Parte* Response in the above-noted dockets. Please date stamp and return one copy in the enclosed self-addressed envelope.

These copies are being sent under separate cover to you pursuant to your rule on *ex parte* presentations, Rule 1.1206 of the FCC Rules.

Sincerely,

A handwritten signature in cursive script, appearing to read "Cynthia B. Miller".

Cynthia B. Miller, Esquire
Bureau of Intergovernmental Liaison

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STATE OF FLORIDA

JOE GARCIA
CHAIRMAN



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Public Service Commission

May 25, 2000

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MAY 26 2000

FCC MAIL ROOM

The Honorable William E. Kennard
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Florida Public Service Commission's *Ex Parte* Response to the May 8 CALLS ILECs' *Ex Parte* in Docket Nos. 98-137, 99-117, and 98-26

Dear Chairman Kennard:

On May 8, 2000, an *ex parte* letter was filed jointly by the incumbent local exchange carriers ("ILECS") participating in the Coalition for Affordable Local and Long Distance Service ("CALLS") Plan (*i.e.*, Bell Atlantic telephone companies, BellSouth Corporation, SBC Communications, Inc., and GTE Service Corporation) in response to concerns raised in Comments and Reply Comments filed in the Federal Communications Commission's ("FCC") further depreciation rulemaking proceeding ("FNPRM") in Docket Nos. 98-137, 99-117, and 98-26. The ILECs' May 8 *ex parte* letter was apparently initiated due to the concerns raised by many parties that state ratepayers would be vulnerable to ILECs' claims to recover significant amounts of amortization costs resulting from the approach set forth in the FNPRM. To address this concern, the ILECs submitted the May 8 *ex parte* letter, as an "intransigent commitment," stating that they "will not seek to recover any portion of the proposed FCC amortization amount by increasing interstate or intrastate prices."

To be clear, the Florida Public Service Commission ("FPSC") views the May 8 *ex parte* letter to be a "real" commitment on the part of the CALLS ILECs. Unfortunately though, this commitment is as ambiguous as the original commitment made in March and still does not alleviate the concerns raised in the comments filed by the FPSC regarding the effect of an above-the-line amortization on intrastate rates and prices. The commitment as stated is that the CALLS ILECs will not seek recovery of the interstate portion (25%) of the amortized amount in intrastate operations or the intrastate portion (75%) of the amortized amount in any intrastate jurisdiction that "automatically mirrors FCC depreciation rates." Although states often work closely with the FCC on depreciation matters, the FPSC is not aware of any state that "automatically mirrors FCC depreciation rates." Thus, the ILECs intrastate commitment is virtually meaningless. If, as Bell Atlantic claims, depreciation rates are irrelevant to price levels, a "below-the-line" amortization should not be as

adverse to the CALLS ILECs as it appears. The conclusion inferred from this reaction is that the ILECs may seek recovery of the 75% allocated intrastate portion of the amortization in intrastate operations.

The fact that the ILECs will not make a meaningful commitment with respect to the intrastate portion of the amortization amount is extremely disturbing to the FPSC. According to facts currently on record in this proceeding, the difference between ILECs' financial and regulatory book levels is approximately \$30 billion. Under the separation rules, approximately \$22.5 billion would be allocated to the state jurisdictions. Without a parallel agreement to the various states, substantial portions of this amount could be borne by state and local ratepayers. Certainly neither the ILECs' comments, replies, nor their May 8 *ex parte* letter provide the necessary commitment. Ultimately, the states have decision-making authority over cost recovery issues. Unfortunately, if the FCC takes the action suggested in the FNPRM, and allows an above-the-line amortization, the presumption will be that those costs should be recovered from intrastate rates. This is not only the wrong result, but is surely a result the FCC does not intend. Moreover, shifting the burden to the state commissions to justify that these amortized costs should not be recovered in consumers' rates will likely create severe hardships for many state commissions with small staff and few resources.

The FPSC appreciates the FCC's efforts to look for areas to streamline and to eliminate unnecessary regulatory requirements. The FCC's proposal to deregulate depreciation is to be complimented, and indeed, was well thought out in its *December 1999 Depreciation Order*. In that *Order*, the FCC suggested that by bringing regulatory book levels to financial book levels, carriers may be set free of regulatory depreciation oversight and entitled to use their own financial depreciation methods if certain safeguards were in place to protect against adverse harms to ratepayers and competition. We firmly believe that, as the *December Depreciation Order* specified, below-the-line treatment of the difference between the financial and regulatory book levels is essential to prevent potential adverse impact on consumers and competition.

The May *ex parte* letter falls short in addressing other stated concerns of the FPSC regarding the proposed depreciation rulemaking. These concerns as discussed in more detail in our April 21, 2000 comments relate to (1) the case by case versus industry wide rulemaking, (2) the amortization period, (3) the presumption that financial depreciation rates are reasonable when the FCC has already concluded that the financial lives have not been justified, (4) the impact of this proposal on universal service high cost loops and unbundled network elements, (5) the presumption that financial depreciation rates are reasonable and appropriate for cost study purposes, (6) the need for continued FCC depreciation oversight, and (7) the resolution of questions arising from the Continuing Property Records audits rather than terminating the current proceedings. We reiterate our already filed comments relating to these issues and strongly support the comments filed by the NARUC in this regard.

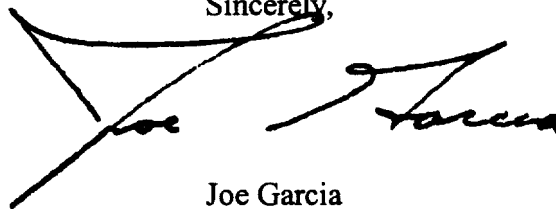
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The FPSC urges the FCC to carefully consider whether the proposal put forth in the FNPRM is in the best interest of the public, and whether it is truly essential to its adoption of the CALLS Plan. If so, the FPSC submits that bona fide safeguards, including below-the-line treatment, should be required so that consumers are not adversely impacted by the FCC's deregulatory action. If not, we strongly believe that this rulemaking should be abandoned and the FCC should proceed with the case specific waiver process outlined in its *December Depreciation Order*.

Finally, the depreciation and the CALLS proceedings are two separate dockets and one should not be a predetermined condition of the other. The FPSC finds it particularly bothersome that most discussions regarding depreciation have been *ex parte* rather than open discussions.

Pursuant to FCC requirements, we are sending two copies of this letter to the Office of the Secretary.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Garcia", written over a horizontal line.

Joe Garcia
Chairman

cc: The Honorable Susan Ness
The Honorable Harold W. Furchtgott-Roth
The Honorable Michael K. Powell
The Honorable Gloria Tristani